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8 **UNITED STATES DISTRICT COURT**  
9 **SOUTHERN DISTRICT OF CALIFORNIA**  
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11 JAMES R. GOULD,

12 Plaintiff,

13 vs.

14 COMMISSIONER OF THE SOCIAL  
15 SECURITY ADMINISTRATION,

16 Defendants.

CASE NO. 07CV1039-LAB (WMC)

**ORDER GRANTING MOTION FOR  
INSTRUCTIONS; AND**

**ORDER SETTING DEADLINES  
FOR OBJECTIONS AND CLAIMS**

17 After the Court awarded \$10,068.88 in attorney's fees pursuant to the Equal Access  
18 to Justice Act (EAJA), Plaintiff disclaimed any interest in them, saying that by the terms of  
19 his retainer agreement, they belong to his attorney Mary Adele Mitchell. Another attorney  
20 has been substituted in as counsel in place of Mitchell, and has unsuccessfully attempted  
21 to contact her or notify her of the award. Defendant's counsel has filed a motion seeking  
22 further instructions about what to do. Defendant stands ready to pay the fees, but thus far  
23 they have been unclaimed.

24 Courts have been confronted with cases where a plaintiff or other claimant cannot be  
25 found. *See, e.g., Massey v. Wal-Mart Stores, Inc.*, 2017 WL 2539832 (N.D. N.Y. May 5,  
26 2017); *Wiggins v. Daymar Colleges Group, LLC*, 317 F.R.D. 42 (W.D. Ky. 2016). While  
27 Mitchell herself was not a party, Plaintiff's filings make clear she is in a comparable position.  
28 But this case is somewhat different because an award has already been made.

1 Plaintiff's fee motion did not allege bad faith or any facts that would support an award  
2 of fees as a sanction. Rather, the fee award was made in furtherance of the EAJA's purpose  
3 to eliminate barriers that prevent small businesses and individuals from securing vindication  
4 of their rights in proceedings by or against the government. See *Scarborough v. Principi*,  
5 541 U.S. 401,406 (2004). The EAJA is applied with equitable considerations in mind.  
6 422–23. The purpose of eliminating barriers is served by making a fee award available,  
7 which has been done here.

8 Of course in nearly all cases, the fee award will be claimed. But here, the Plaintiff  
9 through counsel has apparently disclaimed any right to the fees, and neither Mitchell nor any  
10 of her successors in interest have appeared or can be found. Under 28 U.S.C.  
11 § 2412(d)(1)(A), the Court can decline to award fees if “special circumstances” would make  
12 an award unjust. Under the unusual circumstances here, the purpose of the statute would  
13 not be served by providing a windfall to the Plaintiff. Nor would it be served by requiring the  
14 government either to pay some other party under a *cy pres* arrangement or to sequester the  
15 money indefinitely.

16 California has an Unclaimed Property Law, Cal. Civ. Code §§ 1501, *et seq.* under  
17 which unclaimed property can be transferred to the Controller and possibly reunited with its  
18 owner. The Court is not inclined to utilize this procedure, however. First, as it exists now, the  
19 award is only a right to receive money. Only if the money is actually paid will there be  
20 property to deposit with the Controller. Second, because efforts to notify Mitchell have been  
21 unavailing, it seems unlikely the Controller's efforts will meet with any success. And third, if  
22 the fees are paid and remain unclaimed, they will escheat to the state of California. The  
23 EAJA's purposes would not be served by this.

24 The Court instead proposes to set a deadline for making a claim to the fee award. If  
25 the fees go unclaimed, the Court under 28 U.S.C. § 2412(d)(1)(A) will determine that special  
26 circumstances make a fee award unjust and will rescind its fee award. If any party objects  
27 to this proposal, they must file a written objection by **August 3, 2018**.

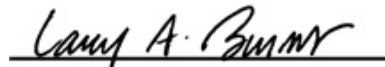
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1 Assuming no objections are filed, the deadline for claiming all or part of the fees will  
2 be **Friday, September 14, 2018**. If Mitchell, Plaintiff, or anyone else wishes to claim all or  
3 part of the fees, they shall file a claim by that date. If no claims are filed, the fee award will  
4 be rescinded.

5 Counsel for the government shall mail a copy of this order to any known addresses  
6 for Mitchell. If counsel for either party are aware of any other reasonable way of notifying  
7 Mitchell or her successors, they are directed to make efforts to do so.

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9 **IT IS SO ORDERED.**

10 DATED: July 12, 2018

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12 **HONORABLE LARRY ALAN BURNS**  
13 United States District Judge  
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